

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:)	CASE NO.
)	
CAREMERICA, INC.)	06-02913-8-JRL
)	
DEBTOR)	CHAPTER 7
)	
JAMES B. ANGELL, CHAPTER 7 TRUSTEE,)	
For Caremerica, Inc.)	Adversary Proceeding .
)	Number: 08-00174-8-JRL
)	
Plaintiff,)	
v.)	
)	
BER CARE, INC., f/k/a PPS, Inc., Adcar, Inc.,)	
Ann H. Day, Antonia P, Elliott f/k/a Antonia)	
Ferrara, Joseph Alex Cannon, Jr., Cher Cannon,)	
Diversified Enterprise, Inc. d/b/a Canon)	<u>DELTACOM'S MOTION TO</u>
Construction, Cape Associates, L.L.C. Capital)	<u>DISMISS</u>
Resource Solutions, LLC, Carolina Long Term)	
Care, LLC d/b/a Carolina Care, LLC, City of)	
Kinston, City of Wilson, Crescent State Bank,)	
DeltaCom, Inc., Dona H. Burrell, First Eastern,)	
LLC, GEMSA Loan Services, Limited Partnership,)	
Institution Food House, Inc., Institutional Services,)	
L.L.C., Jette Farrell, John F. Smith III, Joshua)	
Houghton, National Assisted Living Risk Retention)	
Group and/or Rinklin-Shuttleworth of Georgia,)	
LLC, Opesnet Corporation, Pachki Incorporated)	
d/b/a Andy Anderson Agency, Pinewood)	
Associates, a General Partnership and/or Pinewood)	
of Pink Hill, LLC, Powell Properties of Durham)	
County, LLC, Red Mortgage Capital, Inc., Robert)	
D. Shelley, Dawn O. Rowland and/or Walter D.)	
Rowland, Sandra Etheridge, Stanley E. Brunson,)	
Jr., Susan W. Simms, WFY, LLC, Robert D.)	
Shelley d/b/a WYC, LLC and/or Ed Prince d/b/a)	
WYC, LLC)	
)	
Defendants.)	

Defendant DeltaCom, Inc. moves the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012, to dismiss this adversary proceeding for failure to state a claim upon which relief can be granted, for the reasons outlined in the accompanying memorandum of law.

This the 16th day of November, 2008.

GRAEBE HANNA & WELBORN, PLLC

/s/ Douglas W. Hanna
Douglas W. Hanna, NCSB #18225
Mark R. Sigmon, NCSB #37762
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the following persons via the Court's electronic CM/ECF system:

Phillip W. Paine
Howard Stallings From & Hutson, P.A.
P. O. Box 12347
Raleigh, NC 27605

This the 16th day of November, 2008.

By: /s/ Douglas W. Hanna
Douglas W. Hanna